

Committee report

Committee	LICENSING (DETERMINATIONS) SUB-COMMITTEE
Date	12 JANUARY 2012
Title	TO DETERMINE AN APPLICATION TO VARY A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 FOR SAINSBURY'S SUPERMARKET, FOXES ROAD, NEWPORT, ISLE OF WIGHT, PO30 5ZB.
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BACKGROUND

1. Under section 34 of the Licensing Act 2003, a premises licence holder may apply to vary the licence to add licensable activities or alter the times for such activities, or to remove conditions, where this cannot be done by way of a minor variation.
2. The applicant is required to submit a copy of the application to Responsible Authorities, as defined in the Licensing Act, and to place a notice of the application at the premises and in a local newspaper.
3. Only certain people may make representations in respect of the application and if these are not resolved the licensing authority must hold a hearing to determine the licence.
4. An application for a variation to the premises licence was submitted to the licensing authority on 2 November 2011 for Sainsbury's Supermarket, Foxes Road, Newport, Isle Of Wight, PO30 5ZB. (Appendix A).

CONSULTATION

5. The Licensing Act 2003 prescribes a twenty eight day consultation period, commencing the day after the application has been correctly served. Applicants are required to serve each of the Responsible Authorities with a copy of the application, advertise the application at or on the premises and also in the local newspaper.
6. This application for a variation of the premises licence was received on 2 November 2011. The application was advertised in the Isle of Wight County Press, at the premises and on the Council's web site. The consultation period was extended by thirteen days due to an error on the blue notice. This was rectified and the consultation period ended on 13 December 2011.

7. A plan of the premises can be found at Appendix B to this report.
8. The outcome of the consultation in respect of this application is as follows:

Responsible Authorities

Children's Services	No representation received
Environmental Health	No representation received
Fire and Rescue Service	No representation received
Trading Standards Service	No representation received
Planning Services	No representation received
Police	Representation received

9. Police consider that the conditions attached to the existing premises licence (Appendix C) are inadequate to prevent theft of alcohol and to ensure that alcohol is not sold to customers who may be drunk or aged under 18 years. Whilst police accept that Sainsbury's is a responsible retailer they consider it necessary for effective proactive licence conditions to be in place at a licensed premises of this size.
10. The applicants have proposed a number of new licence conditions but in the view of the police the conditions are insufficient to ensure the licensing objectives are fully promoted.
11. The police have therefore recommended a new set of conditions. Some of the conditions are based on those originally proposed by the applicant but have been reworded so as to be (in the view of the police) more effective. A copy of the police representation along with recommended conditions can be found at Appendix D to this report.

Interested Parties

12. One valid representation has been received from an interested party during the consultation period. Newport Parish Council has raised concerns relating to the licensing objectives:
 - Prevention of public nuisance
 - Prevention of crime and disorder
13. The Parish Council have raised concerns over the proposal to extend the sale of alcohol until midnight and fear this could lead the way to 24 hour sales. Members are concerned that the clientele that are likely to make use of the additional hour for the sale of alcohol could potentially cause incidents of drunken anti social behaviour and disorder in what is a largely residential area. Members believe that the request by the applicant to extend the sale of alcohol until midnight should be firmly resisted.
14. A copy of the representation made by Newport Parish Council can be found at Appendix E to this report.

15. A copy of a map showing the location of the premises in relation to the surrounding residential area can be found at Appendix F to this report.

FINANCIAL/BUDGET IMPLICATIONS

16. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Planning and Regulatory Services, balances income generated from fees.

LEGAL IMPLICATIONS

17. The 28 day consultation period ended on 13 December 2011. Schedule 1 of the Licensing Act (Hearings) Regulations 2005 states that the application must be determined within 20 working days of the end of the consultation period.

National Guidance

18. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
19. Each application on its own merits –
 - 1.15 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case.
20. Avoiding duplication of other legal requirements
 - 1.16 The licensing authority should only impose conditions on a premises licence or club premises certificate which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence.
21. Hours of opening
 - 1.19 The four licensing objectives should be paramount considerations at all times and licensing authorities should always consider the individual merits of a case.

22. Related legislation and strategies

- 1.27 In addition, when considering a new premises licence or following reviews that have identified problems with a particular premises, licensing authorities may consider imposing conditions as appropriate, such as preventing customers from taking open containers outside the premises or installing CCTV. However, any conditions imposed must not be aspirational and must be within the control of the licensee. For example, a condition may require a premises to adopt a particular dispersal policy, but a licensee cannot force customers to abide by it.

23. Public nuisance

- 2.32 The 2003 Act requires licensing authorities (following receipt of relevant representations) and responsible authorities, through representations, to make judgements about what constitutes public nuisance and what is necessary to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.33 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.
- 2.34 Conditions relating to noise nuisance will normally concern steps necessary to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time in the evening to more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid unnecessary or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.35 As with all conditions, it will be clear that conditions relating to noise nuisance may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996,

or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the vicinity of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary.

- 2.36 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise in the immediate vicinity of the premises may also prove necessary to address any disturbance anticipated as customers enter and leave.

Implications under the Crime and Disorder Act 1998

24. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Human Rights

25. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
26. There are three convention rights, which need to be considered in this context:

Article 6 - Right to a Fair Trial

27. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
28. It has been held that the fact that there is a right of appeal to the Magistrates' Court from any decision of the Licensing Authority is sufficient to make the Council's licensing system compliant with the convention rights.

Article 8 - Right to Respect for Private and Family Life

29. Everyone has the right to respect for his private and family life, his home and his correspondence. In the case of article 8 there shall be no interference by a public authority with the exercise of this right except as such in accordance with the law and is necessary on a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder and crime, for the protection of health or morals or for the protection of the rights and freedoms of others.
- Article 1 - First Protocol Protection of Property

30. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the case of Article 1 of the first protocol it states that “no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions (of which articles 6 and 8 are but two) shall not however in any way impair the right of the state to enforce such laws as it deems necessary to control the use of the property in accordance with general interest or to secure the payment of taxes or other contributions or penalties”.
31. The Licensing Authority acknowledges the right of businesses in its area to operate, but equally acknowledges the fact that this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises. The Sub-Committee needs to be clear as to the rights granted and the need to ensure that the reasons given for any interference are proportionate and in accordance with the Council's legitimate aim.
32. It is considered that the following paragraphs from the Licensing Authority's Statement of Licensing Policy 2011 – 2014 have a bearing upon the application. Members' attention in respect of this particular application is drawn to:
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|-------------|---|------------------------|
| Paragraph 1 | Introduction | All |
| Paragraph 2 | Licensing Objectives | All |
| Paragraph 3 | Licensable Activities | All |
| Paragraph 4 | Integration of Strategies and Other Legislation | All |
| Paragraph 5 | Approach to Licensing Applications | All |
| Paragraph 6 | Cumulative Effect | 6.1, 6.11 |
| Paragraph 7 | Representation, Reviews and Appeals | 7.1, 7.6 – 7.8 |
| Paragraph 8 | Enforcement | N/A |
| Paragraph 9 | Operating Schedules | 9.11, 9.12, 9.14, 9.17 |

EQUALITY AND DIVERSITY

33. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equalities Act 2010 and further improvements to diversity legislation all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not exhaustive, it does cover current legislation but future development could also include poverty and social inclusion as an example).
34. The equality impact assessment looks at how a service promotes equality and diversity to ensure legal compliance and that the services we provide and the decisions that we make meet the needs of our local community.

35. It is believed that the equality impact assessment will not be affected by the grant or refusal of this premises licence application.

OPTIONS

36. Option 1: Vary the licence as per the application.
37. Option 2: Vary the licence as per the application with any additional conditions that the Sub-Committee deem reasonable and proportional to promote the licensing objectives.
38. Option 3: Refuse the whole or part of the application.

RISK MANAGEMENT

39. With regard to Option 1: To grant the licence as per the application may not adequately address the concerns raised. The decision not to address these concerns may subsequently be appealed by those parties who have made representations.
40. With regard to Option 2: The risk of crime and disorder or nuisance being attributed to the premises could be reduced by attaching conditions to the licence to promote the licensing objectives. Conditions must be proportionate and any decision to attach additional conditions may be appealed by all parties if they believe the conditions do not assist in promoting the licensing objectives.
41. With regard to Option 3: If the Sub-Committee decides to refuse all or part of the application, the decision may be appealed by all parties.

EVALUATION

42. The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives, which are:
- (a) The Prevention of Crime and Disorder
 - (b) The Prevention of Public Nuisance
 - (c) Public Safety
 - (d) The Protection of Children from Harm
43. Members should determine the application in accordance with section 35 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.
44. In making its decision, the Sub-Committee is also obliged to have regard to national guidance and the Council's own Statement of Licensing Policy.
45. The Sub-Committee must have regard to all of the representations made and the evidence it hears.
46. This application has had sufficient consultation as prescribed under the Licensing Act 2003. With the exception of those stated, none of the responsible authorities under the Act have made representations to this application.

47. If the Sub-Committee do not address the concerns that have been raised, the risk of an appeal by the objectors may increase.
48. The risk of public nuisance could be reduced by attaching conditions to the licence. However, any conditions must be proportionate and the decision to attach conditions may be appealed by all parties but may increase the risk of an appeal by the applicant.
49. If the sub-committee rejects all or part of the application it should do so having had regard to all the evidence and be satisfied that to do so would not adversely impact on the licensing objectives. This decision may be appealed by all parties.

RECOMMENDATION

50. Members should determine the application in accordance with section 35 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.

APPENDICES ATTACHED

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| Appendix A | Application for a variation to a premises licence under section 34 of the Licensing Act 2003 |
| Appendix B | Plan of the premises |
| Appendix C | Copy of the current premises licence |
| Appendix D | Representation received from Hampshire Constabulary |
| Appendix E | Representations received from Newport Parish Council |
| Appendix F | Map showing location of premises in relation to surrounding residential area |

BACKGROUND PAPERS

- Isle of Wight Council Licensing Authority Statement of Licensing Policy 2011 – 2014.
http://www.iwight.com/living_here/environment/environmental_health/images/LICENSINGPOLICY2011-2014.pdf

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